In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-406

GEORGE DENTI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner, Michael Paterno, and Paterno & Sons, Inc., were convicted on all counts of a nine-count indictment. The first count charged George Denti, Michael Paterno, and Paterno & Sons, Inc., with conspiring to evade the income taxes of the corporation for each of its taxable years from 1966 through 1970, in violation of 18 U.S.C. 371. Counts two through five charged the individuals and the corporation with attempting to evade the corporation's income taxes from 1967 through 1970, in violation of 26 U.S.C. 7201. Counts six through nine charged Paterno (Counts six through eight) and Denti (Count nine) with subscribing the false income tax returns of the corporation for the same fiscal years, in violation of Section 7206(1) of the Internal Revenue Code (26 U.S.C.).

The trial court sentenced petitioner Denti to concurrent nine-month prison terms on each count and a total fine of $10,000, and the court of appeals affirmed.

This is a companion case to that of *Michael Paterno and Paterno & Sons, Inc.* v. *United States*, pending on petition for a writ of certiorari, No. 74-394. Petitioner raises essentially the same contentions that are raised in the *Paterno* petition. Accordingly, we are serving petitioner's counsel with a copy of our brief in opposition in that case.

In addition to the arguments presented in the petition in No. 74-394, petitioner urges (Pet. 22-23) that the decision below rejecting the claim that the indictment should be dismissed for failure to grant a conference in the Internal Revenue Service is in conflict with *United States* v. *Heffner*, 420 F.2d 809 (C.A. 4), and *United States* v. *Leahey*, 434 F.2d 7 (C.A. 1). Those cases, however, did not involve the power of the grand jury to indict but related only to the use at trial of statements made by potential defendants to government representatives during the investigation. There is a basic difference, in that "questioning without *Miranda* warnings affects a taxpayer's post-offense actions, while indictment without conference does not." *United States* v. *Goldstein*, 342 F. Supp. 661, 666 (E.D.N.Y.).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

DOJ-1974-12